CLAIM REJECTIONS - 35 USC SECTION 112

ITEMS #3 AND 4

The Examiner refers to the second paragraph of 35 U.S.C. 112:

> "The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention."

The Examiner also states that Claims 1-13 are rejected as being indefinite. For Claim #1, the Examiner referred to the phrase "or other work type vehicle." The Examiner also states the confusion regarding "a curved front surface" in Claims #1 and #8 and a "straight non-curved surface" in Claims #7 and #13. The Examiner mentions the reference to "vehicle" in Claim #8 and reciting "skidsteer loader" in the same claim. The claims are modified as shown below and Claims 15-24 have been added.

Revised Claims with Modifications

1. [Modified] An attachment for securing to a skid steer loader~~, back hoe, or other work type vehicle which allows such attachments,~~ having;

A connecting frame allowing for the connection to a skid steer loader~~vehicle~~;

A base connected perpendicular to said connecting frame and near the bottom so that the base is directed just above the skid steer loader's~~vehicles~~ connecting point providing support when the attachment is connected to the ~~vehicle~~skid steer loader;

A front surface perpendicular to said base;

Said~~A curved~~ front surface connected to the end of the base opposite the connecting frame and vertically such that the ~~curved~~ front surface extends above and below the base and said ~~curved~~ front surface includes a surface for cutting and a

A support structure connected between said connecting frame and said base to provide strength to the attachment.

2. [Modified] An attachment according to claim 1, wherein said ~~curved~~ front surface is shaped as a concave shape.

3. [Modified] An attachment according to claim 1, wherein said ~~curved~~ front surface is shaped as a concave shape with radius ranges from 2 to 24 feet.

4. [Modified] An attachment according to claim 1, wherein said ~~curved~~ front surface is shaped as a convex shape with radius from 2 to 24 feet.

5. [Modified] An attachment according to claim 1, wherein said ~~curved~~ front surface is shaped as a convex shape with radius ranges from 2 to 24 feet.

6. [Modified] An attachment according to claim 1, wherein said ~~curved~~ front surface is shaped as an S shape from 2 to 24 feet in length.

7. [Modified] An attachment according to claim 1, wherein said ~~curved~~ front surface is a straight non-curved surface from 2 to 24 feet in length.

8. [Modified] An attachment for securing to a skidsteer loader having;

A connecting frame with two supporting cutouts towards the bottom for allowing the insertion of skidsteer latches and a clamp mechanism attached toward the top for securing the attachment~~;~~

A base connected perpendicular to said connecting frame and near the bottom so that said base is directed just above the ~~vehicles~~skid steer loader connecting point providing support when the attachment is connected to the skid steer loader~~vehicle~~;

A front surface perpendicular to said base;

Said~~A curved~~ front surface connected to the end of said base opposite said connecting frame and vertically such that said ~~curved~~ front surface extends above and below said base and said ~~curved~~ front surface includes a beveled edge and a

A support structure connected between the connecting frame and the base to provide strength to the attachment.

9. [Modified] An attachment according to claim 8, wherein said support structure ~~is~~ consists of three perpendicular supports.

10. [Modified] An attachment according to claim 8, wherein said ~~curved~~ front surface is shaped as a concave shape with radius ranges from 2 to 24 feet.

11. [Modified] An attachment according to claim 8, wherein said ~~curved~~ front surface is shaped as a convex shape with radius ranges from 2 to 24 feet.

12. [Modified] An attachment according to claim 8, wherein said ~~curved~~ front surface is shaped as an S-shape from 2 to 24 feet in length.

13. [Modified] An attachment according to claim 8, wherein said ~~curved~~ front surface is a straight non-curved surface from 2 to 24 feet in length.

14. [Modified] A method for smoothing the walls of a swimming pool during the construction of a swimming pool comprising the steps of:

a. connecting a vehicle with an attachment having a connecting frame, a base and a curved front surface with an edge designed for cutting,

b. transporting the attachment to the swimming pool wall, ~~and~~

c. raising or lowering the attachment while contacting the wall surface with the curved front surface of the attachment to smooth the walls,

d. collecting the dirt and other items at the bottom of the swimming pool or spreading the dirt and other items along the bottom of the pool by utilizing the attachment and

e. repeating the steps above as necessary.

15. [New Claim] An attachment for securing to a backhoe having;

A connecting frame with two supporting cutouts towards the bottom for allowing the insertion of a backhoe's latches and a clamp mechanism attached toward the top for securing the attachment;

A base connected perpendicular to said connecting frame and near the bottom so that the base is directed just above the backhoe's connecting point providing support when the attachment is connected to the backhoe;

A front surface perpendicular to the ground;

Said front surface connected to the end of the base opposite the connecting frame and vertically such that the front surface extends above and below the base and said front surface includes a surface for cutting and a

A support structure connected between said connecting frame and said base to provide strength to the attachment.

16. [New Claim] An attachment according to claim 15, wherein said front surface is shaped as a concave shape with radius ranges from 2 to 24 feet.

17. [New Claim] An attachment according to claim 15, wherein said front surface is shaped as a convex shape with radius ranges from 2 to 24 feet,

18. [New Claim] An attachment according to claim 15, wherein said front surface is shaped as an S shape from 2 to 24 feet in length;

19. [New Claim] An attachment according to claim 15, wherein said front surface is a straight non-curved surface from 2 to 24 feet in length;

20. [New Claim] An attachment for securing to a powered excavator having;

A connecting frame with two supporting cutouts towards the bottom for allowing the insertion of a powered excavator's latches and a clamp mechanism attached toward the top for securing the attachment;

A base connected perpendicular to said connecting frame and near the bottom so that the base is directed just above the powered excavator's connecting point providing support when the attachment is connected to the powered excavator;

A front surface perpendicular to the ground;

Said front surface connected to the end of the base opposite the connecting frame and vertically such that the front surface extends above and below the base and said front surface includes a surface for cutting and a

A support structure connected between said connecting frame and said base to provide strength to the attachment.

21. [New Claim] An attachment according to claim 20, wherein said front surface is shaped as a concave shape with radius ranges from 2 to 24 feet,

22. [New Claim] An attachment according to claim 20, wherein said front surface is shaped as a convex shape with radius ranges from 2 to 24 feet,

23. [New Claim] An attachment according to claim 20, wherein said front surface is shaped as an S shape from 2 to 24 feet in length;

24. [New Claim] An attachment according to claim 20, wherein said front surface is a straight non-curved surface from 2 to 24 feet in length;

CLAIM REJECTIONS - 35 USC SECTION 102

ITEMS 5 & 6

The Examiner stated that the Solaja Patent No. 4,809,449 discloses an attachment for securing to a skid steer loader.

> The attachment comprises a connecting frame (34, 38, 40) allowing for connection to the skid steer, a base (32) connected perpendicular to the connecting frame, a curved front surface (16) connected to the end of the base opposite the connecting frame and **vertically curved**, and a support structure (30, 36) connected between the connecting frame and the base to provide strength to the attachment. The connecting frame has two supporting cutouts (46) at the bottom and a clamp mechanism (48) at the top."

The Examiner referred to "vertically curved" which is not mentioned in the Claims. Also, the Claim #1 requires a surface for cutting. The loader attachment (10) from the Solaja Patent No. 4,809,449 does not include a surface for cutting.

The Claims have been modified to make it clear that this invention is designed with a surface remaining perpendicular to the ground with curves in a dimension toward or away from the skid steer loader, backhoe or powered excavator.

ITEM #7

The Examiner referred to the Desmarais Patent No. 5,819,444. The Examiner stated

> "The Desmarais '444 patent discloses an attachment for securing to a vehicle. The attachment comprises a connecting frame (50), a base (6), a curved front surface (2,4) and a support structure (42) connected between the connecting frame and the base. The curved front surface is movable to a plurality of shapes so that it can create a concave shape (Fig. 5), convex shape, an S-Shape (see e.g. Fig. 10) or a straight non-curved shape. The attachment includes supporting cutouts(48) and a clamp mechanism (18)."

We believe the Desmarais Patent '444 does not disclose a "front surface includes a surface for cutting" Claim #1 or a "front surface includes a beveled edge" per Claim #8. Claims 2 -7 and Claims 9-13 are dependent upon such Claims #1 and Claim #8 respectively thus also are not disclosed in the Desmarais Patent.

CLAIM REJECTIONS - 35 USC SECTION 103

ITEM # 8 AND 9

The Examiner quoted Section 103(a) regarding the basis for obviousness rejection....

> a) *A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.*

Obviousness under 35 U.S.C. Section 103 is a question of law. Both the suggestion and the expectation of success must be founded in the prior art, not in the applicant's disclosure. *Amgen Inc. v. Chugai Pharmaceutical Co. Ltd., 927 F.2nd 1200, 18 U.S.P.Q. 2d 1016, 1022 Fed. Cir. 1991.*

The Examiner provided Patent #4,809,449 to Solaja as the reason for being unpatentable under 35 USC 103(a). This patent neither provides the suggestion of smoothing walls nor the expectation of success. The Soloaja invention states in that it is designed to "engage the ground."

There is no mention of swimming pool construction in Patent 4,809,449 or construction of similar sites where the smoothness of the walls is critically important. There is also no mention of a method of smoothing walls of any type and in particular no mention of smoothing swimming pool walls. Therefore, we believe it is not obvious to one having ordinary skill in the art at the time the invention was made of the method for smoothing the walls of a swimming pool.

Before obviousness may be established, the Examiner is required to show that there is either a suggestion in the art to produce the claimed invention or a compelling motivation

based on sound scientific principles. Logic compels that the suggestion or motivation be accompanied by a general knowledge of the existence of art-recognized techniques for carrying out the proposed invention. *Ex parte Kranz, 19 U.S.P.Q.2d 1216, 1218 (B.P.A.I. 1990)*

None of the art teaches smoothing of the walls of a swimming pool during swimming pool construction. The Examiner has not presented any evidence to support the conclusion that a worker in this art would have had any motivation to smooth the walls of a swimming pool during swimming pool construction. There is no mention of potential gunite savings, there is no mention of reducing labor costs for construction firms, etc.

Therefore, we believe the claimed method #14 is not obvious and should not have been rejected under 35 U.S.C. 103 (a) as being unpatentable.